

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7348) DISMISSAL AND
6 Friends of Michael Grimm and Nancy) CASE CLOSURE UNDER THE
7 Watkins in her official capacity as Treasurer,) ENFORCEMENT PRIORITY
8 Michael Caputo, and) SYSTEM
9 Caputo Public Relations)
10)

11
12 **GENERAL COUNSEL'S REPORT**

13 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
14 basis to allocate its resources and decide which matters to pursue. These criteria include, without
15 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
16 into account both the type of activity and the amount in violation; (2) the apparent impact the
17 alleged violation may have had on the electoral process; (3) the complexity of the legal issues
18 raised in the matter; and (4) recent trends in potential violations of the Federal Election
19 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the
20 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket
21 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances
22 or to find no reason to believe that a violation occurred.

23 The Office of General Counsel has scored MUR 7348 as a low-rated matter and has
24 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
25 reasons set forth below, we recommend that the Commission find no reason to believe the
26 allegations that Friends of Michael Grimm and Nancy Watkins in her official capacity as

¹ The EPS rating information is as follows: Complaint Filed: March 13, 2018. Committee Response Filed: June 12, 2018. No response received from Michael Caputo or Caputo Public Relations.

1 treasurer (“the Committee”),² Michael Caputo, or Caputo Public Relations³ violated 52 U.S.C.
2 §§ 30116(a)⁴, 30118(a)⁵ and dismiss the allegation that Friends of Michael Grimm and Nancy
3 Watkins in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R.
4 § 104.11(b).

5 The Complaint alleges that Michael Caputo, a partner in Caputo Public Relations, served
6 as an official spokesperson and advisor for the Committee since at least September 2017, but
7 that the Committee has not reported any payments or debts to Caputo or Caputo Public
8 Relations.⁶ Complainant asserts that Caputo or Caputo Public Relations made and the
9 Committee accepted an excessive in-kind contribution or, in the alternative, that the Committee
10 failed to properly report payments or debts to Caputo or Caputo Public Relations.⁷

11 The Committee responds that Caputo is also Managing Director of Zeppelin
12 Communications and that its payments to Zeppelin Communications for Caputo's services are
13 reflected on its 2018 April Quarterly Report and 2018 Pre-Primary Report.⁸

² Grimm is a 2018 candidate for the U.S. House of Representatives for New York's Eleventh District. Friends of Michael Grimm is his principal campaign committee.

³ Caputo Public Relations is a corporation incorporated in Florida under the legal name Michael Caputo Public Relations, Inc. Florida Secretary of State Details for Michael Caputo Public Relations, Inc., <http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=MICHAELCAPUTOPUBLICRELATIONS%20P030001140680&aggregateId=domp-p03000114068-99f80262-aa7b-4ec9-97bd-092cb8127f53&searchTerm=Michael%20Caputo%20public%20relations&listNameOrder=MICHAELCAPONE%20L140000360840> (last visited August 27, 2018); *see also* Caputo Public Relations, <http://caputopr.com/about.php> (last visited August 27, 2018).

⁴ The Act prohibits any person from making a contribution to a candidate's principal campaign committee that exceeds the applicable contribution limits for the election cycle.

⁵ The Act prohibits a corporation from making a contribution to a candidate's principal campaign committee and a candidate's principal campaign committee from accepting corporate contributions.

⁶ Compl. at 1-3. (March 13, 2018).

⁷ *Id.* at 4-5.

⁸ Committee Resp. at 2 (June 12, 2018).

1 The Act and Commission regulations require a candidate's principal campaign committee
2 to disclose the total amount of all contributions and disbursements made during the reporting
3 period.⁹ Commission regulations further require a candidate's principal campaign committee to
4 report debts or obligations in excess of \$500 as of the date on which the debt or obligation is
5 incurred.¹⁰

6 There is no available information to suggest that Caputo provided services to the
7 Committee through Caputo Public Relations, and the Committee presented documents showing
8 that it paid another of Caputo's companies, Zeppelin Communications, for these services.
9 Therefore, we recommend that the Commission find no reason to believe that Friends of Michael
10 Grimm and Nancy Watkins in her official capacity as treasurer, Michael Caputo, or Caputo
11 Public Relations violated 52 U.S.C. §§ 30116(a), 30118(a).

12 Although the Committee admits receiving services from Zeppelin Communications
13 starting in October 2017 at a rate of \$5,000 a month, it did not report a debt to Zeppelin
14 Communications in its 2017 Year-End Report. However, in light of the modest amount and the
15 fact that the payments were reported on the Committee's 2018 April Quarterly Report and 2018
16 Pre-Primary Report, we recommend that the Commission dismiss the allegation that Friends of
17 Michael Grimm and Nancy Watkins in her official capacity as treasurer violated 52 U.S.C.
18 § 30104(b)(8) and 11 C.F.R. § 104.11(b), consistent with the Commission's prosecutorial
19 discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler*
20 *v. Chaney*, 470 U.S. 821, 831-32 (1985).

⁹ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

¹⁰ 11 C.F.R. § 104.11(b); *see also* 52 U.S.C. § 30104(b)(8).

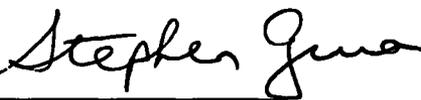
RECOMMENDATIONS

1. Find no reason to believe that Friends of Michael Grimm and Nancy Watkins in her official capacity as treasurer, Michael Caputo, or Caputo Public Relations violated 52 U.S.C. §§ 30116(a), 30118(a);
2. Dismiss the allegations that Friends of Michael Grimm and Nancy Watkins in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.11(b), pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985);
3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
4. Close the file as to all respondents.

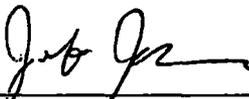
Lisa J. Stevenson
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Kristina M. Portner
Attorney

8.27.18
Date

Attachment:
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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2
3 RESPONDENTS: Friends of Michael Grimm and MUR 7348
4 Nancy Watkins in her official capacity as Treasurer,
5 Michael Caputo, and
6 Caputo Public Relations
7
8

9 This matter was generated by a Complaint alleging violations of the Federal Election
10 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Friends of
11 Michael Grimm and Nancy Watkins in her official capacity as treasurer (“the Committee”),
12 Michael Caputo, and Caputo Public Relations. It was scored as a low-rated matter under the
13 Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to
14 allocate its resources and decide which matters to pursue.

15 The Complaint alleges that Michael Caputo, a partner in Caputo Public Relations, served
16 as an official spokesperson and advisor for the Committee since at least September 2017, but
17 that the Committee has not reported any payments or debts to Caputo or Caputo Public
18 Relations.¹ Complainant asserts that Caputo or Caputo Public Relations made and the
19 Committee accepted an excessive in-kind contribution or, in the alternative, that the Committee
20 failed to properly report payments or debts to Caputo or Caputo Public Relations.²

21 The Committee responds that Caputo is also Managing Director of Zeppelin
22 Communications and that its payments to Zeppelin Communications for Caputo’s services are
23 reflected on its 2018 April Quarterly Report and 2018 Pre-Primary Report.³

¹ Compl. at 1-3. (March 13, 2018).

² *Id.* at 4-5.

³ Committee Resp. at 2 (June 12, 2018).

1 The Act and Commission regulations require a candidate's principal campaign committee
2 to disclose the total amount of all contributions and disbursements made during the reporting
3 period.⁴ Commission regulations further require a candidate's principal campaign committee to
4 report debts or obligations in excess of \$500 as of the date on which the debt or obligation is
5 incurred.⁵

6 There is no available information to suggest that Caputo provided services to the
7 Committee through Caputo Public Relations, and the Committee presented documents showing
8 that it paid another of Caputo's companies, Zeppelin Communications, for these services.
9 Therefore, the Commission finds no reason to believe that Friends of Michael Grimm and Nancy
10 Watkins in her official capacity as treasurer, Michael Caputo, or Caputo Public Relations
11 violated 52 U.S.C. §§ 30116(a), 30118(a).

12 Although the Committee admits receiving services from Zeppelin Communications
13 starting in October 2017 at a rate of \$5,000 a month, it did not report a debt to Zeppelin
14 Communications in its 2017 Year-End Report. In furtherance of the Commission's priorities
15 relative to other matters pending on the Enforcement docket, the modest amount, and the fact
16 that the payments were reported on the Committee's 2018 April Quarterly Report and 2018 Pre-
17 Primary Report, the Commission exercises its prosecutorial discretion and dismisses the
18 allegations that Friends of Michael Grimm and Nancy Watkins in her official capacity as
19 treasurer violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. § 104.11(b). *Heckler v. Chaney*, 470
20 U.S. 821, 831-32 (1985).

⁴ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

⁵ 11 C.F.R. § 104.11(b); *see also* 52 U.S.C. § 30104(b)(8).